STATE OF MICHIGAN

COURT OF APPEALS

WAYNE COUNTY TREASURER,

Plaintiff-Appellant,

v

MICHIGAN CONSOLIDATED GAS COMPANY and DTE ENERGY COMPANY, a/k/a DETROIT ENTERPRISE, INC.,

Defendants-Appellees.

UNPUBLISHED
February 12, 2004

No. 241730
Wayne Circuit Court
LC No. 01-143307-CZ

Before: Schuette, P.J., and Cavanagh and White, JJ.

SCHUETTE, P.J. (*concurring in part and dissenting in part*).

I agree with my colleagues that the circuit court did not err in applying the primary jurisdiction doctrine in the present case and in denying summary disposition to plaintiff. However, I respectfully dissent from the majority's conclusion that the trial court erred in granting MichCon's cross-motion for summary disposition. I would affirm the decision of the trial court.

Although the trial court did not specify which subsection of MCR 2.116(C) it was relying on when it denied plaintiff's motion for summary disposition and granted MichCon's cross-motion for summary disposition, this Court's review under subsection (C)(10) is appropriate because the trial court reviewed and relied on matters outside the pleadings in arriving at its decision on the motions. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). Under MCR 2.116(C)(10), summary disposition is granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." Under MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

The trial court properly granted MichCon summary disposition pursuant to MCR 2.116(C)(10). We find there is no genuine issue of material fact that the tribunal ruled that the STC's new multiplier tables were lawful and have been incorporated into the official assessor's manual. Additionally, under the plain and ordinary meaning of MCL 211.10e, the tribunal's opinion, and under case law, plaintiff was required to use the tables provided in the official assessor's manual as a guide in arriving at the TCV of MichCon's personal property, or provide other evidence used to arrive at a different TCV. Here, plaintiff provided absolutely no proof

that it utilized any evidence other than the "outdated" repudiated multiplier tables that it was not permitted to use.

In the present case, the tribunal found that "[a] local unit is not free to disregard [the new multiplier tables] and apply a substitute table." It determined that "[a] local assessing official has no authority to adopt and apply as a *mass appraisal tool* a multiplier table other than the latest tables included in the official *Assessor's Manual* or other manual provided by the STC." The tribunal concluded that "the methodology used by the STC to develop and construct [the new multiplier tables] for use as a mass appraisal tool to value and assess regulated public utility [transmission and distribution] property does not constitute an error of law or adoption of a wrong principle" and it incorporated these tables into the official assessor's manual.

MCL 211.10e provides the following:

> All assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official assessor's manual or any manual approved by the [STC], consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the [STC] as a guide in preparing assessments.

"A fundamental rule of statutory construction is that the court is obliged to ascertain and give effect to the intention of the Legislature, and it is equally axiomatic that words are to be given their ordinary, normally accepted meaning." *Joy Management Co, supra*, 730. Under the plain and unambiguous language of MCL 211.10(e), assessors must use the multiplier tables promulgated by the STC and incorporated into the assessor's manual as a guide in setting assessments on personal property. The new multiplier tables must neither be flagrantly disregarded nor casually ignored by tax assessors. Therefore, as the tribunal in the STC case held, local assessors are required to use the STC's new multiplier tables that have been incorporated into the assessor's manual in preparing tax assessments, unless evidence of a different [TCV] is apparent, in which case a party may deviate from the manual. *Washtenaw Co v State Tax Comm*, 422 Mich 346, 351 n 1; 373 NW2d 697 (1985); *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353, 356; 483 NW2d 416 (1992). Ultimately, the TCV of the property controls the tax assessment. *Washtenaw Co, supra*, 364-365.

In the present case, the trial court repeatedly asked plaintiff if it had any market data or any other evidence that supported its tax assessments, aside from the "outdated" repudiated multiplier tables it used to arrive at the TCV. Plaintiff claimed that it had "ample" other evidence but that it was not within the trial court's jurisdiction to view this evidence. However, the trial court was not seeking to make an independent determination whether this other evidence was sufficient, it only sought to enforce the tribunal's ruling that other evidence must be presented if plaintiff chooses not to use the new multiplier tables in the assessor's manual in assessing MichCon's personal property taxes. Plaintiff did not present any other evidence and thus there is no data to support plaintiff's refusal to apply the statutorily mandated STC multiplier tables in this case. Therefore, the trial court properly granted summary disposition in favor of MichCon and dismissed the case; there are no "delinquent" taxes to collect, as MichCon has already paid taxes in an amount properly calculated using the new STC multiplier tables from the assessor's manual.

I would affirm the grant of MichCon's cross-motion for summary disposition.

/s/ Bill Schuette